



7020-02

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-918]

**Certain Toner Cartridges and Components;  
Commission Determination to Review in Part an Initial Determination Granting  
Complainant's Motion for Summary Determination of Violation of Section 337 and, on  
Review, to Modify Certain Portions of the Initial Determination; Request for Written  
Submissions on Remedy, the Public Interest, and Bonding**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part an initial determination ("ID") (Order No. 34) of the presiding administrative law judge ("ALJ") granting complainants' motion for summary determination of violation of section 337 and, on review, to modify certain portions of the ID. The Commission also requests written submissions on remedy, public interest, and bonding in accordance with the schedule provided below.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the

Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("Section 337"), on June 12, 2014, based on a complaint filed by Canon Inc. of Tokyo, Japan; Canon U.S.A., Inc. of Melville, New York; and Canon Virginia, Inc. of Newport News, Virginia (collectively, "Canon"). 79 FR 33777-78 (Jun. 12, 2014). The complaint alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 8,280,278 ("the '278 patent"); 8,630,564 ("the '564 patent"); 8,682,215 ("the '215 patent"); 8,676,090 ("the '090 patent"); 8,369,744 ("the '744 patent"); 8,565,640 ("the '640 patent"); 8,676,085 ("the '085 patent"); 8,135,304 ("the '304 patent"); and 8,688,008 ("the '008 patent"). *Id.* The notice of investigation named thirty-three companies as respondents. *Id.* The Commission's Office of Unfair Import Investigations was also named as a party. Subsequently, the investigation was partially terminated based on withdrawal of the complaint as to all asserted claims of four patents, specifically: (1) claim 1 of the '744 patent; (2) claim 1 of the '640 patent; (3) claims 1, 2, 3, and 4 of the '085 patent; and (4) claim 1 of the '304 patent.

The ALJ issued initial determinations terminating the investigation based on consent orders as to fifteen respondents: Print-Rite Holdings Ltd.; Print-Rite N.A., Inc.; Union Technology Int'l (M.C.O.) Co. Ltd.; Print-Rite Unicorn Image Products Co. Ltd.; Innotex Precision Ltd.; Ninestar Image Tech Limited; Zhuhai Seine Technology Co., Ltd.; Ninestar Technology Company, Ltd.; Seine Tech (USA) Co., Ltd.; Nano Pacific Corporation; International Laser Group, Inc.; Ink Technologies Printer Supplies, LLC; LD Products, Inc.; Linkyo Corporation;

and Katun Corporation. *See* ALJ Order Nos. 13 (*not reviewed* Nov. 4, 2014), 16 (*not reviewed* Nov. 24, 2014), 28 (*not reviewed* Apr. 3, 2015), 29 (*not reviewed* Apr. 3, 2015), 30 (*not reviewed* Apr. 3, 2015), 31 (*not reviewed* Apr. 3, 2015), and 32 (*not reviewed* Apr. 3, 2015). The ALJ also issued an ID terminating the investigation based on Canon's withdrawal of allegations as to two respondents, Seine Image Int'l Co., Ltd. and Ninestar Image Tech, Ltd. *See* ALJ Order No. 4 (*not reviewed* Aug. 1, 2014). Likewise, the ALJ issued an ID terminating the investigation as to respondent Seine Image (USA) Co., Ltd. due to the corporate dissolution of the respondent. *See* ALJ Order No. 27 (*not reviewed* Apr. 1, 2015). These eighteen respondents are collectively referred to as the "Terminated Respondents."

The ALJ also issued IDs finding the following ten respondents in default: Acecom, Inc.-San Antonio; ACM Technologies, Inc.; Shenzhen ASTA Official Consumable Co., Ltd.; Do It Wiser LLC; Grand Image Inc.; Green Project, Inc.; Nectron International, Inc.; Online Tech Stores, LLC; Printronic Corporation; and Zinyaw LLC. *See* Order Nos. 6 (*not reviewed* Aug. 25, 2014), 12 (*not reviewed* Oct. 1, 2014), 15 (*not reviewed* Nov. 17, 2014). These ten respondents are collectively referred to as the "Defaulting Respondents."

The remaining five named respondents are Aster Graphics, Inc.; Jiangxi Yibo E-Tech Co., Ltd.; Aster Graphics Co., Ltd.; The Supplies Guys, LLC; and American Internet Holdings, LLC. These respondents are no longer actively participating in the investigation, but have neither been terminated from the investigation nor found to be in default. Each of them has acknowledged and stipulated that it has failed to act within the meaning of Commission Rule 210.17, at least because it failed to file a prehearing statement and brief in accordance with the Procedural Schedule (Order No. 9), and that it therefore has no standing to contest Canon's evidence and arguments that it has violated section 337 of the Tariff Act of 1930, as amended,

19 U.S.C. 1337. *See* Stipulation Regarding the Status of the Aster and Supplies Guys Respondents (Feb. 26, 2015). These five respondents are collectively referred to as the “Non-Participating Respondents.”

On March 10, 2015, Canon filed a Motion for Summary Determination of Violations by the Defaulting Respondents and Non-Participating Respondents and Recommended Determination on Remedy and Bonding. The Commission investigative attorney filed a response in support of the motion. The Non-Participating Respondents filed a response (“Aster Resp.”) to the motion in which they state, *inter alia*, that they “do not oppose the motion for summary determination.” Aster Resp. at 1.

On May 12, 2015, the ALJ issued an ID (Order No. 34) granting Canon’s motion for summary determination of violation and recommending the issuance of a general exclusion order and several cease and desist orders. No party petitioned for review of the ID.

The Commission has determined to review the portion of the ID titled “Establishing Violations Of Section 337 Through Uncontested Allegations” on pages 46-50 of the ID and, on review, to strike the above-referenced portion of the ID, as well as any language referring to that stricken portion (*e.g.*, “The uncontested allegations and adverse inferences aside,” in the first sentence of the last paragraph on page 50), as irrelevant in reaching the ALJ’s violation determination. *See* ID at 46-50. The Commission has also determined to strike any references to uncontested allegations as submitted evidence on violation (*e.g.*, “; *see also* Complaint ¶¶ 160-161 (uncontested allegations)” in the third line of page 56). The finding of violation as to these respondents is based on substantial, reliable, and probative evidence. *See* 19 U.S.C. 1337(g)(2). The Commission has also determined to correct a typographical error in the second sentence on page 33 of the ID by substituting “four” instead of “three” in the

above-referenced sentence. The Commission has further determined to modify the citation in the first full paragraph on page 42 of the ID by striking an incorrect citation to *Certain Flooring Products*, Inv. No. 337-TA-443, Comm'n Notice of Final Determination of No Violation of Section 337, 2002 WL 448690, at\*59, (Mar. 22, 2002). This document has only three pages. The Commission has also determined to supplement an incomplete citation to *Enercon GmbH v. Int'l Trade Comm'n*, 151 F.3d 1376 (Fed. Cir. 1998) with the relevant page number, *i.e.*, *Enercon GmbH v. Int'l Trade Comm'n*, 151 F.3d 1376, 1384 (Fed. Cir. 1998). The Commission has determined not to review the remainder of the ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (Dec. 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of

articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

**Written Submissions:** Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Canon and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Canon is further requested to provide the expiration dates of the '278 patent, the '564 patent, the '215 patent, the '090 patent, and the '008 patent, and state the HTSUS subheadings under which the accused articles are imported. Canon is also requested to supply the names of known importers. The written submissions and proposed remedial orders must be filed no later than the close of business on July 13, 2015. Reply submissions must be filed no later than the close of business on July 20, 2015. Such submissions should address the ALJ's recommended determinations on remedy and bonding which were made in Order No. 34. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary

by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-918") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/handbook\\_on\\_electronic\\_filing.pdf](http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf)). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 24, 2015.

Lisa R. Barton,  
Secretary to the Commission.